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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 198

FRANK S. BLACKFORD, AS TRUSTEE IN BANKRUPTCY OF MUNRO-VAN HELMS COMPANY,

Petitioner

vs.

COMMERCIAL CREDIT CORPORATION,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

This is a plenary suit by the Trustee in Bankruptcy (Petitioner) against a secured creditor (Respondent) of the Bankrupt to recover as voidable transfers under Section 70 of the Bankruptcy Act (11 U.S.C.A. 110) amounts of money representing collections made by the creditor on accounts receivable validly assigned to it by the Bankrupt.

The District Court's opinion, while not reported, is in the Record in two parts. The following may be of help to

determine what was and what was not decided below so as to clarify the issues before this Court.

One part, (R. pp. 593 to 601), after a trial on the merits deals with Petitioner's claim of invalidity as to assignments of accounts prior to bankruptcy, the assignments being for adequate value to secure concurrent loans, which accounts were paid to the Respondent either after bankruptcy or within the four-month period before bankruptcy. The District Court held this financing to be in conformity with applicable Alabama law, and a valid security arrangement as against the Petitioner. The Court of Appeals affirmed in Part III (A) and (B) of its opinion. *Blackford v. Commercial Credit Corporation*, 263 Fed. (2) 97.

The other part, (R. pp. 606-607, 609), by summary judgment in favor of Respondent, deals with Petitioner's claim of invalidity of assignments of accounts similarly assigned more than four months prior to bankruptcy and which were paid to the Respondent more than four months before bankruptcy. The Court of Appeals in Part IV (A) of its opinion reversed and remanded this phase of the case so that some alleged differences, (non-existent in Respondent's judgment), between these accounts and those involved in the other part could be inquired into in a trial.

The District Court also decided by summary judgment in favor of Respondent (R. p. 607) that, as to all claims of the Petitioner, none of the assignments were vulnerable to attack by Petitioner on any theory of being either fraudulent transfers, actual or constructive, or of being in fraud of creditors under Alabama law. The Court of Appeals affirmed in Part III (B) and Part IV (B) of its opinion.

The Court of Appeals also decided in Part VI (A) of its opinion that usury was not present in the financing arrangement, and in Part V that no preferential transfers under Section 60 of the Bankruptcy Act (11 U.S.C.A. 96)

were involved in the case. No serious attempt was made to prove Respondent had reasonable cause to believe the Bankrupt was insolvent prior to August 3, 1953, bankruptcy having occurred July 30, 1953.

JURISDICTION

The Petition erroneously brings before this Court the entire controversy between the parties. As is obvious from the opinions below, no final adjudication has been had as to one part of the case. Petitioner's Statement in Paragraph (g) (ii) (Petition, p. 19) overlooks the fact that the case was remanded in part. The Petition must be considered as confined to the affirming portion of the opinion of the Court of Appeals.

QUESTIONS PRESENTED

The lending arrangement herein and the series of assignments of accounts thereunder and the receipt of collections by Respondent, was the normal revolving non-notification accounts receivable financing in widespread use today, plus publication thereof with resulting notoriety under a notice-filing type of statute enacted in 1949 in Alabama, where the Bankrupt resided. Pursuant to that statute, (Title 39, Sections 207-214, Code of Alabama, 1940, as amended, 1949 Acts of Alabama 503, Act 338—Petition, p. 40) a Statement of Assignment of Accounts Receivable, duly executed by the Bankrupt as assignor and the Respondent as assignee, in precisely the form prescribed therein, was properly filed in the office of the Probate Judge of Talladega County, Alabama. The filed Statement showed as the principal place of business of the assignee its address at 200 West Baltimore Street, Baltimore, Maryland, which in fact was its principal place of business for handling accounts receivable, financing and from which all of the business involved in this case was conducted.

Petitioner contended (a) that the designation in the publicly filed Statement of the Baltimore address, (incidentally the only address at which information concerning the Bankrupt's account could have been secured) was incorrect and voided the effectiveness of the filed Statement and (b) that the assignments of accounts receivable, even though publicized and for a valuable concurrent consideration were void under the Alabama Fraudulent Conveyance Statute, Title 20, Sections 1 and 7, Code of Alabama 1940 (Petition, p. 51).

The District Court rejected all of Petitioner's contentions and the Court of Appeals affirmed.

The questions presented are:

1. What is meant by the phrase "principal place of business" as used in the Alabama Accounts Receivable Statute, (Section 209, Title 39, Code of Alabama, 1940, as amended, Section 3, Act No. 338, Acts of Alabama, 1949—Petition, Appendix p. 40) as applied to Respondent, a Maryland corporate assignee which handles the business in question out of its Baltimore office by there accepting assignments and making loans thereon by depositing same in the Bankrupt's bank account in a Baltimore bank, and which is qualified and has several independent, autonomous offices in Alabama for other purposes, none of which is in fact a principal office *vis-a-vis* its other offices or handle the type of financing business here involved or had any knowledge or information concerning the particular transactions here involved.

2. Is a normal non-notification accounts receivable financing arrangement a fraudulent transaction and void under Title 20, Sections 1 and 7, Code of Alabama, 1940 where accounts are assigned for an adequate and concurrent consideration, where the entire arrangement is duly publicized under applicable local notice—filing statute

and where there is absolutely no evidence of fraud or of any fraudulent intent or of any intent to hinder, delay or defraud creditors.

STATEMENT

In spite of the size of the Record, there is no real or substantial conflict as to the facts in this case. For a convenient reference, the situation of the parties and the operation of the financing arrangement can be gathered almost entirely from the affidavit of Mr. Ortel at page 321.

Commercial Credit Company, Inc. of Maryland, a Maryland corporation, with an office at 200 West Baltimore Street, Baltimore, Maryland, entered into an accounts receivable contract in Baltimore, Maryland, on May 19, 1949, with Munro-Van Helms, under which it agreed to lend to Munro-Van Helms 85% of the face amount of accounts receivable assigned and delivered to it at its office in Baltimore. Loans under this contract were advanced to Munro-Van Helms by being deposited in Munro-Van Helms' bank account in Baltimore, Maryland, at the Union Trust Company, with duplicate deposit slips being mailed to Munro-Van Helms in Alabama.

Commercial Credit Company, Inc. of Maryland never had any office or did any business in Alabama and was not qualified as a foreign corporation in that State.

Under the Alabama Assignment of Accounts Receivable Statute, effective October 7, 1949, both parties duly filed in the office of the Probate Judge of Talladega County, Alabama, a Statement of Assignment of Accounts Receivable, which was duly renewed or refiled each year thereafter, said Statement indicating that the principal office of Commercial Credit Company, Inc. of Maryland

was at 200 West Baltimore Street, Baltimore, Maryland the correct address of said company.

On December 31, 1952, Commercial Credit Company, Inc. of Maryland was merged and liquidated into its parent corporation, Commercial Credit Corporation, a Maryland corporation, which assumed its predecessor's contract with Munro-Van Helms, to which assumption Munro-Van Helms agreed. In accordance therewith, Commercial Credit Corporation, a Maryland corporation, and Munro-Van Helms executed and duly filed in Talladega County, Alabama, on December 31, 1952, a Statement of Assignment of Accounts Receivable showing as the assignee's principal place of business, 200 West Baltimore Street, Baltimore, Maryland. The financing arrangement continued to be handled exclusively and entirely from that office as theretofore. All Munro-Van Helms contacts with Commercial Credit Corporation were with this office, assignment schedules were continued to be mailed to that office and loans were made from that office by deposit in Munro-Van Helms' bank account in Baltimore, as aforesaid.

Commercial Credit Corporation, the parent corporation, had been qualified as a foreign corporation in Alabama since 1945 and had several offices in that State, but none of those offices knew of or had anything to do either with the Munro-Van Helms contract or any commercial or accounts receivable financing whatsoever. These Alabama offices dealt only with matters of consumer credit such as small loans and automobile and domestic appliance sales financing. Each of these offices was completely independent of the others and none was a principal place of business with respect to the other offices in Alabama. The District Court so found, affirmed by the Court of Appeals. Commercial Credit Corporation also designated as an agent for service of process in Alabama the members of the law

firm of Ball and Ball in the First National Bank Building at Montgomery, Alabama, and, in accordance with Alabama Constitution and statute respecting qualification of foreign corporations, designated their office address as the address at which the resident agent resided, but this law office was never even a place of business of Commercial Credit Corporation.

REASONS FOR DENYING THE WRIT

I.

THE ISSUES BEFORE THIS COURT WERE CAREFULLY AND EXTENSIVELY CONSIDERED IN THE COURTS BELOW AND THE AFFIRMING OPINION OF THE COURT OF APPEALS IS CORRECT

The only objections urged to the validity of this financing arrangement are that:

(a) there was a failure to comply with the Alabama assignment statute in that the publicly filed notice of Dec. 31, 1952 stated an incorrect, but not a false or misleading address for the assignee; and

(b) the arrangement even though for value and without any evidence of fraud was nevertheless void as a constructive fraud.

The Court of Appeals most thoroughly and completely considered both of these issues as is obvious from its opinion and answered both adversely to Petitioner.

On the first point, the words "principal place of business" are not words of art. They should be given their ordinary and common understanding in the light of the purpose of the statute (*Warner vs. Goltra* 293 U. S. 156) as meaning the place of business of the assignee where the business under consideration was handled, in fact the only place of

business from which information concerning the matter could be secured. See, *Second National Bank of Houston vs. Phillips* (5th Cir.) 189 Fed. (2) 115 and *Tezel and Carter vs. Roark (Texas)* 301 S.W. (2) 179. Under the plain words of the statute, insofar as the assignee is concerned, the address did not have to be an Alabama address.

As among the six other offices of Respondent in Alabama, none of which ever did or had anything at all to do with the type of business here under consideration, and none of which knew anything about the particular financing arrangement with the Bankrupt, not any one of those offices was a principal place of business. Each of such offices was autonomous and completely independent of the other offices. Petitioner's arbitrary choice of the Montgomery, Alabama office at 219 Church Street, on the basis of volume of business done, (Petition, p. 15), is absurd since annual fluctuation of volume of business could have a principal place of business so determined shifting from year to year. Actually, Birmingham was the first office opened in Alabama but Petitioner does not suggest that that was the principal place of business since, in fact, it was no more so than Montgomery.

Certainly, neither the Bankrupt or its Trustee or any of its creditors were in any way misled or capable of being misled in any particular whatsoever by the stated address of the assignee in its filed notice. Had any other address been given, such as any office in Alabama, there was the real possibility that inquiry to such office might have resulted in a disclaimer of any financing arrangement with the Bankrupt based on complete lack of knowledge. This would have seriously misled any inquirer. Had any other address been stated in the filed Statement, the Trustee would now be contending that that address was wrong and the Baltimore address where information was available should have been used.

The indication in Respondent's franchise tax returns to a principal office in Montgomery refers to the office of a law firm which was the office of the required designated agent for service of process. These tax returns are not documents filed for public information or required to be filed to convey notice to the public, and no matter what was stated therein, it would be immaterial for present purposes.

The Alabama Constitution requires that every foreign corporation have a resident agent for service of process, with a stated address at which such agent must reside. This address need not be a place of corporate business. Alabama statutes with respect to domestic corporations do require the designation of a statutory "principal office", but with respect to foreign corporations, only require the designation of a "known place of business", at which the resident agent for process must be located. Therefore, the words used in the Alabama Assignment of Accounts Receivable Act requiring indication by the assignee in the publicly filed statement of a "principal place of business", which, with respect to the assignee, need not be in Alabama, could not have meant anything in the nature of a statutory principal office or the address of its agent for process.

As to the second objection that the transfers were constructively fraudulent under local law, this is fully answered by the application of the rules laid down in *Adkins vs. Bynum (Ala.)* 109 Ala. 251, 19 So. 400.

If Petitioner's contention on this point was carried to its logical conclusion, it would mean that every security arrangement involving a transfer of title to the securing property would be constructively fraudulent and void. This would completely preclude any security in any kind of intangible property. Such a result is absurd

2

THE PETITION SEEKS REVIEW WITH REFERENCE TO A QUESTION OF FACT SETTLED BELOW

The issue of whether Respondent's address in the publicly filed Statement was its "principal place of business" is a mixed question of law and fact and the District Court found as a fact that the Respondent had no principal place of business in Alabama.

The Supreme Court, of course, does not review questions of fact. *Southern Power Company vs. North Carolina Public Service Co., et al.*, 263 U.S. 508; 44 S.Ct. 164.

3

THE COURT SHOULD LEAVE UNDISTURBED INTERPRETATION OF LOCAL LAW

It is the policy of the Supreme Court to leave undisturbed the holding of a Court of Appeals on a question of interpretation of state law. *Spiegel's Estate, et al. vs. Commissioner of Internal Revenue*, 335 U.S. 701, 708; 69 S.Ct. 301, 304.

4

THIS CASE DOES NOT WARRANT REVIEW BY THE SUPREME COURT

Supreme Court Rule 19 which specifies the elements necessary to determine whether a case merits consideration requires the existence of "special and important reasons" (*Rice vs. Sioux City Memorial Park Cemetery, Inc.* 349 U.S. 70, 75 S.Ct. 614) for granting of the Writ. The Court does not sit for the benefit of the particular litigants (*Mag*

nam Import Company vs. Coty 262 U.S. 159, 163; 43 S.Ct. 531), and "special and important reasons imply a reach to a problem beyond the academic or the episodic" *(Rice vs. Sioux City Memorial Park Cemetery Inc., supra)*. The Writ should not issue where the question before the Court is not of public importance. *District of Columbia vs. Sweeney*, 310 U.S. 631, 60 S.Ct. 1082.

The Petition (pp. 43-44) to the contrary notwithstanding, this case presents nothing more than a simple issue of interpretation of local law, in part already settled by local state court decisions, it is not of public importance, it does not involve any question of constitutional rights or privileges, it does not present any problem of recurring significance in the field of bankruptcy law or one whose decision by this Court would aid in the orderly and proper administration of bankruptcy estates; it does not even involve a question of construction of any provision of the Bankruptcy Act, and the opinion of the Court of Appeals on the issues before this Court is not in conflict with the opinion of any other Circuit requiring a solution by this Court of such conflict.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

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CERTIFICATE OF SERVICE

I, Benjamin Leader, one of the attorneys for Commercial Credit Corporation, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 4 day of August, 1959, I served copies of the foregoing Brief in Opposition to the Petition for a Writ of Certiorari on Morris K. Sirote, Esq., and also on Francis H. Hare, Esq., counsel of record for the Petitioner in said cause, by mailing said copies in duly addressed envelopes, with first class postage prepaid, to said Morris K. Sirote, Esq., at 1142 Brown Marx Building, Birmingham, Alabama, his post office address, and to Francis H. Hare, Esq., at 703 Comer Building, Birmingham, Alabama, his post office address.

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